IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 681 of 2002

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**
&
HONOURABLE **MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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GSRTC - Appellant(s)
Versus
JAYSHRI M. MODY & 5 - Defendant(s)

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Appearance :
MR ASHISH M DAGLI for Appellant
MR NILESH M SHAH for Defendant(s) : 1 - 5.
None for Defendant(s) : 4,
NOTICE SERVED for Defendant(s) : 6,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE C.K.BUCH
26th November, 2007

ORAL JUDGMENT *(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)*

The above Appeal, preferred under Section 173 of

the Motor Vehicles Act, 1988 and the Cross Objection, arise from the judgment and award dated 8th November, 2001 passed by the Motor Accident Claims Tribunal [*Aux*.], Ahmedabad City in Motor Accident Claim Petition No. 1079 of 1999. The claimants were the widow, minor children and the parents of the deceased-Manojbhai Mody. By the *impugned* Award, the claimants have been awarded compensation in the sum of Rs.13,59,000/= with interest @ 12% *per annum* and the proportionate cost. Feeling aggrieved, the opponent no.1-Gujarat State Road Transport Corporation, the owner of the offending vehicle, has preferred the above First Appeal No. 681 of 2002 and the claimants have preferred cross objection for enhancement of the amount of compensation.

On 13th September, 1999, at about 3.30 in the afternoon, the deceased-Manojbhai Mody was riding a motor cycle on Jotana – Jakasan road with the pillion rider one-Himatji Jivaji Solanki. The motor cycle hit the oncoming ST bus bearing registration no. GJ-18-V-2417 enroute Bahucharaji-Gandhinagar. On account of the said accident, both the driver and the pillion rider fell off the motorcycle. The driver of the

motorcycle, Manojbhai Mody, received multiple head injuries which resulted into his death.

The claimants lodged the above referred Motor Accident Claim Petition No. 1079 of 1999 before the Motor Accidents Claims Tribunal, Ahmedabad City [hereinafter referred to as, "***the Tribunal***"] for recovery of compensation in the sum of Rs. 1,57,15,883/=. According to the claimants, the accident in question occurred on account of rash and negligent driving of the offending bus which belonged to Opponent no.1-Corporation which was driven by its driver-Opponent no.2. At the time of accident, the deceased was 40 years of age. He was educated person with a Bachelor's Degree in Agriculture. He was employed by the Gujarat State Land Development Corporation Limited as a Field Supervisor; the last pay he drew was Rs. 10,761/=; that had he lived longer, he would have earned promotions, would have also earned benefit of upward pay revisions and upon his retirement from service at the age of 58 years, he would have earned the terminal benefits. The claimants, therefore, claimed compensation for loss of future income, expectancy of life, loss of

consortium, etc.

The claim was contested by the Corporation. According to the Corporation, the offending bus was driven by its driver at a reasonable speed. As the bus was a local-bus, plying on a road which was 12' in width, it was driven at a slow speed. At the place of accident, there was a curvature in the road. On sighting the oncoming motorcycle, the driver had stopped the bus and had parked it on the left hand shoulder of the road. N*evertheless*, the motorcycle which was driven by the deceased in excessive speed, hit the bus in the middle of its right-hand side which resulted into the unfortunate accident. Thus, it was the deceased who was negligent in driving his vehicle. The claimants were, therefore, not entitled to compensation.

In support of their claim, the claimants produced Panchnama of the scene of accident at Exh.52, postmortem report [*Exh. 54*]. The claimants examined, the claimant no.1-widow of the deceased [Exh.21]; the claimant no. 4-father of the deceased [Exh.35]; the pillion rider-Hemanti Jivaji [Exh. 36]. The colleagues of the deceased – one Shri Karsandas

Parmar [Exh. 41], Shri Ishwardas Hirdas [*Exh.47*] and Hasmukhbhai Bhavsar [*Exh.51*] also gave evidence before the Tribunal. The Corporation examined its driver - Amratbhai Shankerbhai Patel -Opponent no.2 at Exh.67 and produced FIR at Exh.73.

The Tribunal, considering the above referred evidence on record, held that it was the offending ST bus which was driven rashly and negligently and at an excessive speed. For the said tortuous conduct of its driver, the Corporation was liable to pay compensation to the claimants. Considering the last pay of around Rs. 10,500/= drawn by the deceased, the dependency factor was worked out at Rs. 7,000/=. The Tribunal adopted the multiplier of 16 and computed the compensation at Rs. 13,44,000/= in addition the Tribunal has awarded a sum of Rs. 10,000/= for loss of expectancy of life and a sum of Rs. 5,000/= to the claimant no.1 for loss of consortium.

Mr. Dagli has appeared for the Corporation. He has submitted that the Corporation has restricted its challenge to a sum of Rs. 3,00,000/=. He has submitted that considering the evidence of the driver of offending bus and the panchnama of the scene of

accident, it is evident that the accident occurred at a curvature; the road was a narrow 12' wide local road; the offending bus was stationary, parked on the left extreme of the road and that the motor cycle collided with the bus in the middle of its right hand side. It is evident that it was the deceased who was driving the motorcycle at an excessive speed. He could not control his vehicle on the curvature, resulting into the fatal accident. He has submitted that though the deceased was riding the motorcycle, he did not take safety measure of wearing a helmet. Thus, evidently, it was the deceased who was negligent. The compensation awarded to the claimants, therefore, requires to be reduced to the extent of negligence on the part of the deceased in driving his motorcycle. He has also submitted that the multiplier of 16 adopted by the Tribunal is excessive. Considering the age of 41 years of the deceased, a multiplier of 12 years would be adequate.

The Appeal is contested by Mr. Shah. He has pressed the claim for enhancement of compensation. He has submitted that the Tribunal has erred in not considering the future increase in the income of the

deceased; likely promotions that the deceased would have earned and the expected upward rise in the pay. He has supported the multiplier of 16 years adopted by the Tribunal. He has, however, submitted that the amount of compensation awarded under the heads "*loss of expectancy of life*" and "*loss of consortium*" is conservative. The Tribunal has also erred in not awarding compensation for the cost of funeral expenses. He has relied upon the evidence of the aforesaid Karsanbhai Parmar [*Exh.41*] and Ishwardas Hirdas [*Exh.47*]. He has also relied upon the payslip issued in connection with the last pay drawn by the deceased [*Exh.52*].

It appears that apart from the aforesaid evidence on record, the claimants have also produced the relevant recruitment rules and the pay rules, though not exhibited.

*O*ccurrence of accident in question or the death of the deceased on account of injuries suffered in the accident are not at dispute. We are unable to agree with Mr. Dagli that it was the deceased who was rash and negligent in driving his motorcycle and that the offending bus was parked on the left hand extreme

of the road. It is indisputable that the accident in question occurred on the curvature of the road. Considering the statement made by the driver of the offending bus before the police, at the time of accident, the panchnama of the scene of the accident and the evidence of the pillion rider-Himatji Jivaji Solanki, we are of the opinion that the Tribunal has rightly held that it was the driver of the offending bus which was rash and negligent in driving the bus and that the accident occurred on account of such rash and negligent driving of the bus.

As to the quantum of compensation, we have noticed that the claimants had lodged claim for an exorbitant sum of Rs. 1,57,15,883/= without any basis for the same. We, however, are of the opinion that the Tribunal has erred two fold – [i] in working out the dependency factor, relying upon the last drawn salary of the deceased and [ii] in adopting the multiplier of 16. It has come on record that the last drawn salary of the deceased was around Rs. 10,500/= in the pay-scale of Rs. 5,500-9,000. Indisputably, the deceased had a long service ahead. Undoubtedly, the deceased would have earned annual

increments and would have reached at the maximum of the pay-scale i.e., Rs.9,000/=. Considering other admissible allowances, the monthly salary of the deceased would have increased upto Rs. 13,500/=. Thus, the average monthly pay of the deceased could have been worked out at Rs. 12,000/=. Considering the large family that the deceased had to support i.e., his wife, two children and the parents, we are of the opinion that the deceased could not have spent more than Rs.3,000/= on himself. Thus, he would have been spending a sum of Rs. 9,000/= for the maintenance of his family. We are, therefore, of the opinion that the annual dependency factor would be of Rs. 1,08,000/= and not Rs. 84,000/= as calculated by the Tribunal. We, however, are of the opinion that the 16 years' multiplier adopted by the Tribunal is indeed excessive. Considering the age of 41 years of the deceased, a fair multiplier would have been 14 years. We are, therefore, of the opinion that the claimants were entitled to compensation in the sum of Rs. 15,12,000/=. We also find that the sum of Rs. 5,000/= awarded for loss of consortium is conservative and the Tribunal has failed to make any award towards

funeral expenses. We hold that the claimant no.1-widow of the deceased was entitled to a sum of Rs. 10,000/= for loss of consortium. The claimants were also entitled to a sum of Rs. 5,000/= for funeral expenses. We, therefore, hold that the claimants were entitled to a compensation in the sum of Rs. 15,37,000/=. The award passed by the Tribunal requires to be modified accordingly. The award for proportionate cost and interest passed by the Tribunal does not warrant interference.

For the aforesaid reasons, we allow the Appeal and the Cross Objection to the extent indicated hereinabove.

We are, however, constrained to note that the claimants had made an exorbitant claim for compensation in the sum of Rs. 1,57,15,883/= without there being any basis. We, therefore, impose cost of Rs. 10,000/= upon the claimants for making exorbitant and disproportionate claim. The amount of cost of Rs. 10,000/= shall be adjusted against the additional amount of compensation payable to the claimants. The claimants will be entitled to withdraw the amount invested in the Bank, pursuant to the

order of the Tribunal below.

{C.K Buch, J.} {Ms. R.M Doshit, J.}

*Prakash**